

HAWAII ADMINISTRATIVE RULES

TITLE 12 DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS

SUBTITLE 4

ENFORCEMENT DIVISION

CHAPTER 22

**WAGE DETERMINATIONS AND THE ADMINISTRATION AND
ENFORCEMENT OF CHAPTER 104, HAWAII REVISED STATUTES**

Subchapter I Administration and Enforcement

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Historical note: Chapter 12-22 is based substantially upon "Rule XVIII, Relating to Wage Determinations Under Chapter 104, Hawaii Revised Statutes, and the Administration and Enforcement of said Chapter" of the Department of Labor and industrial Relations. [Eff 8/15/55; am 4/16/56; am 9/1/59; R 7/27/81]

SUBCHAPTER 1

ADMINISTRATION AND ENFORCEMENT

§12-22-1 Definitions. As used in this chapter:

"Apprentice" shall be as defined in section 372-2, Hawaii Revised Statutes.

"Average rate" means the rate obtained by adding the hourly rates of wages paid to each worker in a designated class of laborers or mechanics and dividing the sum by the total number of workers in the class.

"Basic hourly rate" shall be as defined in section 104-1, Hawaii Revised Statutes.

"Construction of public work" includes without limitation new construction, reconstruction, development, improvement, alteration, repair, renovation, painting, decorating, dredging, shoring, simultaneous sewer inspection and repair and any other activity performed by a laborer or mechanic employed at the site of a public work or at any property used by the contractor, dedicated for the performance of the contract, such as batch plants, borrow pits, fabrication plants, mobile factories, job headquarters, and tool yards. As used in this section, "other activity performed by a laborer or mechanic employed at the site" includes the following if the activity is an integral part of or is in conjunction with a construction contract, or if there is substantial construction activity involved in a supply, service, or other type of non-construction contract:

- (1) Manufacturing or furnishing of materials, articles, supplies, or equipment on the job site;
- (2) Warranty work except when done by the manufacturer on defective products or equipment;
- (3) Demolition or excavation;
- (4) Landscaping;
- (5) Termite treatment; and
- (6) Installation at the construction site of items or articles fabricated off-site, such as shelving, drapery, and communications equipment.

"Contract" means any type of agreement over \$2,000 for construction of a public work, regardless of what the agreement may be called, including purchase orders and vouchers.

"Contractor" means the general contractor or any subcontractor, including any individual, partnership, firm, corporation, joint venture, or other legal entity, acting directly or through an agent, employee, consultant, corporate officer or corporate director, undertaking the execution of a construction contract over \$2,000 with a governmental contracting agency.

"Cost of fringe benefit" means the rate of contribution

irrevocably made by a contractor to a trustee or to a third person pursuant to a fund, plan, or program in providing benefits to a laborer or mechanic for:

- (1) Health and welfare such as medical or hospital care, compensation for injuries or illness resulting from occupational activity, or insurance to provide for any of the foregoing;
- (2) Unemployment, life insurance, sickness or disability insurance, or accident insurance;
- (3) Vacation and holiday pay;
- (4) Pensions on retirement or death;
- (5) Defraying costs of apprenticeship or other similar programs; or
- (6) Other bona fide fringe benefits as determined by the director;

provided that where a contractor is required by either federal or state law to provide these benefits the rate of contribution or other costs for these benefits shall not be included.

"Department" means the department of labor and industrial relations.

"Director" shall be as defined in section 104-1, Hawaii Revised Statutes.

"Employed" includes every person paid in any manner for working in the construction of a public work under a contract with a governmental contracting agency, regardless of any contractual relationship alleged to exist.

"Governmental contracting agency" shall be as defined in section 104-1, Hawaii Revised Statutes.

"Public work" shall be as defined in section 104-2(a), Hawaii Revised Statutes, and includes without limitation:

- (1) Any building, structure, road, or real property, the construction of which is undertaken:
 - (A) By authority of; and
 - (B) Through the use of funds, grants, loans, bonds, land, or other resources of the State or any county, board, bureau, authority, commission, or other agency or instrumentality thereof, to serve the interest of the general public, regardless of whether title thereof is held by a state or county agency. However, subsequent construction to fixtures or appurtenances attached to the assigned space of an individual occupant, lessee, or tenant of the building or structure, contracted by other than a state or county agency or instrumentality thereof, shall not be subject to chapter 104, Hawaii Revised Statutes.

- (2) Any building or structure constructed under private contract under the following conditions:
 - (A) The property is privately owned, but the entire building or structure is leased to the State or a political subdivision;
 - (B) The lease agreement between the lessor and the State or political subdivision, as lessee, was entered into prior to the construction contract; and
 - (C) The construction work is performed according to plans, specifications, or criteria of the State or political subdivision.

"Trainee" means a person participating, through employment, in a schedule of work experience and who is a party to a trainee agreement approved by and registered with the department.

"USDOL" means the United States Department of Labor

"Wages", "minimum wages", "prevailing wages", "rate of wages", and "wage rates" shall be as defined in section 104-1, Hawaii Revised Statutes. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§12-22-1.1 Transporting of materials, supplies, or equipment.

(a) Chapter 104, Hawaii Revised Statutes, and these rules are applicable, but not limited to, transporting of materials, supplies, or equipment:

- (1) To or from a public work site; or
 - (2) Between a public work site and either another public work site or a dedicated site; when performed by a laborer or mechanic employed at the public work site.
- (b) The following illustrate situations in which chapter 104, Hawaii Revised Statutes, and these rules are not applicable:
- (1) Delivery of materials, supplies, or equipment to a public work site if the delivery persons only drop off the items and perform no construction work at the public work site;
 - (2) Hauling of excavated material away from a public work site for disposal or recycling, where the drivers are on the site only for the purpose of having their trucks filled;
 - (3) Continuous hauling of material to and from a public work site, and the drivers perform no construction work at the public work site;
 - (4) Delivery or removal of equipment to or from a public work site, and the delivery persons operate no equipment on the public work site. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§12-22-2 Method to determine prevailing wage rates. (a) In

making prevailing wage determinations under chapter 104, Hawaii Revised Statutes, the director shall make separate findings of:

- (1) The basic hourly rate; and
- (2) The rate of contribution or cost of fringe benefits paid by the employer when the payment of the fringe benefits by the employer constitutes a prevailing practice. The cost of fringe benefits shall be reflected in the wage rate schedule as an hourly rate.

(b) The rates of wages which the director shall regard as prevailing in each corresponding classification of laborers and mechanics shall be:

- (1) The rate of wages paid to the majority of those employed in the State in the corresponding classes of laborers or mechanics on projects that are similar to the contract work; or
- (2) In the event that there is not a majority paid at the same rate, then the rate paid to the greater number, provided the greater number constitutes thirty per cent of those so employed; or
- (3) In the event less than thirty per cent of those so employed receive the same rate, then the average rate.
[Eff. 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6)
(Imp: HRS §104-2)

§12-22-3 Procedure for wage rate schedules. (a) All schedules of wage rates for laborers and mechanics and any changes thereto shall be based on:

- (1) Surveys or methods which the director may deem necessary to obtain data for wage determinations; or
- (2) Wage determinations made by the Secretary of Labor, USDOL, under the Davis-Bacon Act (40 U.S.C. 55276a-276a-7); or
- (3) Both paragraphs (1) and (2).

(b) Wage rate schedules shall be regularly issued on or about February 15 and September 15 of each year. Additional wage rate schedules, addenda; and notices of changes will be issued as the director deems necessary.

(c) Requests for determination by the director of wage rates for classes of laborers and mechanics not listed on the current schedule of wage rates or for any change, modification, or review of wage rates shall be submitted by the governmental contracting agency or any interested party at least thirty calendar days before advertisement of the specifications for which the determination is sought. Exceptions from this provision shall be made only upon a proper showing in unusual circumstances.

(d) Any increase in wage rates, as determined by the director

and issued in the wage rate schedule, shall be applicable during the performance of the contract, in accordance with section 104-2(a) and (b), Hawaii Revised Statutes.

(e) No wage rate determined by the director shall be less than the rate established by the Secretary of Labor (USDOL) for the corresponding class.

(f) Any changes to the wage rates shall be recognized by the director only upon complete and timely submission of the information, in accordance with section 104-11, Hawaii Revised Statutes. The effective date of these changes shall be the date of publication in the wage rate schedule and shall not be retroactive. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §§104-2, 104-11)

§12-22-4 Method to determine fringe benefit hourly rates. In determining the hourly equivalent of a monthly rate of contribution for a fringe benefit, the monthly rate of contribution shall be divided by one hundred and seventy-three hours and the quotient shall be the hourly rate. [Eff. 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-5 Meeting prevailing wage requirements. A contractor shall pay the prevailing wages contained in a wage rate schedule applicable to laborers or mechanics in any of the following ways:

- (1) By paying not less than the basic hourly rate to the laborers or mechanics and by making the contributions for the fringe benefits as specified in the wage rate schedule;
- (2) By paying not less than the basic hourly rate to the laborers or mechanics and by making contributions for fringe benefits in a total amount not less than the total of the fringe benefits required by the wage rate schedule;
- (3) By paying the basic hourly rate in cash directly to the laborers or mechanics and by making an additional cash payment in lieu of the fringe benefits required by the wage rate schedule; or
- (4) By paying an hourly rate, partly in cash and partly in fringe benefits, which total not less than the prevailing wages [Eff. 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-6 Apprentice and trainee rates. Any apprentice or trainee wage rates established by the director shall apply only to:

- (1) Apprentices and trainees who are parties to apprenticeship and trainee agreements which have been registered with the department or recognized by the department as a USDOL

- nationally approved apprenticeship program; and
- (2) The number of apprentices or trainees on any public work which, in relation to the number of journeyworkers in the same craft classification as the apprentices or trainees employed by the same employer on the same public work, is not in excess of the ratio allowed for employment of apprentices and trainees by the employer under the apprenticeship or trainee standards agreed and subscribed to by the employer and registered with or recognized by the department. A registered or recognized apprentice receiving the journeyworker rate will not be considered a journeyworker for the purpose of meeting the ratio requirement. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-7 Contract provisions. The governmental contracting agency shall cause or require to be inserted in all specifications and contracts made and entered into by the agency for construction of any public work, the wage rate schedule issued by the director and any other stipulation or provision required by chapter 104, Hawaii Revised Statutes. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-8 Classification of laborers and mechanics. (a) The governmental contracting agency shall require that any class of laborers or mechanics which will be employed on a public work and for which the director has not made a wage determination shall be classified by the contractor in a manner which conforms to the classifications contained in the wage rate schedule issued by the director.

(b) If there is a disagreement on the proper classification or reclassification of a particular class of laborers or mechanics to be used, the governmental contracting agency shall submit a written report of the issues in disagreement and refer the matter to the director for determination.

(c) If the governmental contracting agency fails to refer the disagreement to the director as provided by subsection (b) within ten days after a request in writing is made to the governmental contracting agency by any interested party, the interested party may refer the question in writing to the director. [Eff 7/27/81; am and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-2)

§12-22-8.1 Investigation of complaints. Any complaint received by a governmental contracting agency with respect to matters under chapter 104, Hawaii Revised Statutes, shall be referred to the director for investigation and report. [Eff and comp 4/1/96] (Auth:

HRS §104-6) (Imp: HRS §104-5)

§12-22-9 Appeal. Any person aggrieved by the director's determination made pursuant to section 12-22-8 may, within ten days after mailing of the determination, appeal in writing to the labor and industrial relations appeals board. [Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§12-22-10 Record keeping requirements. Each contractor shall maintain accurate and complete payroll records in English containing the following information and data on each laborer and mechanic engaged in the performance of the contract at the job site:

- (1) Name in full;
- (2) Home address;
- (3) Job classification;
- (4) Rate of pay;
- (5) Hours worked each workday and total hours worked each workweek;
- (6) Total weekly straight-time earnings;
- (7) Total weekly overtime earnings;
- (8) Total weekly gross earnings;
- (9) The amount and purpose of each deduction; and
- (10) Total net wages paid and the date paid. [Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-3)

§12-22-11 Rulings and interpretations. All questions arising in any governmental contracting agency relating to the application and interpretation of chapter 104, Hawaii Revised Statutes, and of this chapter shall be referred to the director for ruling and interpretation. [Eff 7/27/81; comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

§12-22-12 Disbursement of accrued amounts withhold on contract.

(a) Within sixty days from the date of written request by the director, the contracting agency shall pay or transfer specified amounts from accrued payments withheld on a contract to the director for:

- (1) Wages due to laborers and mechanics;
- (2) Penalties assessed for a first or second violation; or
- (3) both paragraphs (1) and (2).

(b) Amounts collected or transferred for back wages shall be deposited or credited to the wage claim fund of the department. Amounts collected for penalties shall be deposited or credited to the general fund.

(c) The department shall disburse from the wage claim fund any

wages or overtime compensation due to laborers or mechanics. [Eff and comp. 4/1/96] (Auth: HRS §104-5) (Imp: HRS §104-5)

§12-22-13 Computation of time. The time in which any act provided by these rules is to be done is computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or holiday and then it is also excluded. As used in this section, "holiday" includes any day designed as such pursuant to section 8-1, Hawaii Revised Statutes. [Eff and comp. 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-6)

§§12-22-14 to 12-22-24 (Reserved)

SUBCHAPTER 2

PENALTY FOR FIRST VIOLATION

§12-22-25 Notification of violation. (a) Where the department, either as a result of its own investigation or as a result of a report by a contracting agency, finds that a first violation of chapter 104, Hawaii Revised Statutes, has been committed, the department shall issue a notification of violation to the contractor.

(b) A first violation refers to the first investigation in which the department finds that a contractor has failed to comply with chapter 104, Hawaii Revised Statutes, or a violation which occurs more than two years after the date of notification of first violation. A first violation investigation may involve more than one project; however, offenses shall be determined separately for each project.

(c) A notification of violation shall be final and conclusive twenty days after the date of mailing to the contractor, unless a written notice of appeal is filed with the director, as provided in section 104-5(b), Hawaii Revised Statutes. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HRS §104-5)

§12-22-26 Penalty. (a) A penalty of up to \$1,000 per offense shall be assessed against a contractor for a first violation of chapter 104, Hawaii Revised Statutes.

(b) In determining the offenses committed by a contractor, the department shall assess a separate penalty for each section of chapter 104, Hawaii Revised Statutes, under which the contractor is cited, with respect to each project and each employee.

(c) The amount of the penalty for a first violation shall be

determined by application of the following criteria:

- (1) The severity of the offense;
- (2) Whether the contractor has made a good faith effort to comply with the provisions of chapter 104, Hawaii Revised Statutes, and these rules; and
- (3) Other relevant factors as determined by the director.

(d) Concurrent with or after the issuance of a notification of violation, and within a reasonable period after completion of the investigation, the department shall notify the contractor of the penalty assessed, which shall then be due and payable within twenty days from the date of notification of violation.

(e) Appropriate penalty shall be assessed even if the contractor, after being informed of the offense by the department, initiates immediate action to correct the offense. [Eff and comp 4/1/96] (Auth: HRS §104-6) (Imp: HR §104-5)